

REMARKS/ARGUMENTS

Claims 51-70 remain in the application, without current amendment. Claim 51 is independent and all remaining claims are dependent thereon.

The Examiner has rejected claims 51 and 62-70 under 35 U.S.C. 103(a) as being unpatentable over Dietrich, Jr. et al. (6,896,068) in view of McFarlane (6,698,525). Applicant respectfully traverses this rejection and provides the following comments.

Applicants respectfully submit that “in order to establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference. Second, there must be a reasonable expectation of success. Finally, the prior art references must teach or suggest all the claims limitations. The teachings or suggestions to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicants’ disclosure.” See MPEP § 2142, citing *In re Vaeck*, 947 F.2d 488, 20 USPQ 2d. 1438 (Fed. Cir. 1991).

There is no suggestion or motivation provided in either reference to combine Dietrich with McFarlane. In fact, McFarlane states at column 4, lines 14-16, “No cupped disc blades, cultivator shanks, cultivator sweeps or other horizontal tillage apparatus are mounted to the frame.” These are precisely the elements mounted to the frame in Dietrich, so McFarlane teaches away from the combination.

Even were the combination made, all of the claim limitations would not be taught. Referring to claim 1 and Fig. 1 of McFarlane, the circular blade assembly (38) is comprised of a plurality of parallel circular blades (42) mounted to a shaft (40). Neither McFarlane nor Dietrich disclose “a plurality of individual coulter wheel assemblies”, as in claim 1 b) of the instant case. Furthermore, neither McFarlane nor Dietrich disclose “a mounting means corresponding to each individual coulter wheel assembly”, as in claim 1 c) of the instant case. There is no suggestion in either reference to modify the shaft mounted plurality of coulter wheels of McFarlane in such a way as to make them into individual coulter wheel assemblies, nor to mount each of them individually, and any argument to do so can only be arrived at through impermissible hindsight analysis (see MPEP § 2142, *supra*).

Based on evidence provided in Applicants’ disclosure, there would be no expectation of success if the combination were made. Applicants point out that McFarlane is specifically discussed and distinguished in paragraphs [0008 –

0009] of the specification. It is pointed out that the gang shaft mounted coultter wheels are prone to plugging. Paragraph [0017] points out the surprising advantages of using the staggered individual coultter wheel assemblies of the present invention, particularly relating to reduced plugging. Applicants have therefore placed on the record evidence of the surprising benefits of using individually mounted coultter wheel assemblies and in the face of this evidence one would not expect success in using gang shaft mounted coultter wheels.

From the foregoing, it is clear that not even one of the three criteria required for establishing a *prima facie* case of obviousness has been met. Withdrawal of the rejection under 35 U.S.C. 103(a) is therefore respectfully requested.

Since all of the remaining objections relate to dependent claims, they are rendered moot by the foregoing. Allowance of claim 51 would render all of the currently pending claims allowable.

.....
.....

In view of the above amendment and remarks, reconsideration and allowance of all claims is respectfully requested. In the event any matters remain to be resolved in view of this communication, the Examiner is encouraged to call the undersigned so that a prompt disposition of this application can be achieved. Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

Respectfully submitted,
BRUNET & CO. LTD.

Date: November 30, 2007

/Robert A.H. Brunet, 55,158/
Robert A.H. Brunet
Reg. No. 55,158
Tel.: (519) 474-0700